

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MALANJE PHEA,  
Petitioner,  
v.  
CHRISTIAN PFEIFFER, Warden,  
Respondent.

No. 2:20-cv-00283 WBS GGH P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Pending before the court is petitioner's Amended Motion for Relief From Judgment pursuant to Fed. R. Civ. P. 60(b). ECF No. 73. Also pending is petitioner's Request for an Evidentiary Hearing. ECF No. 72. The amended motion and request for evidentiary hearing were improperly filed after the Honorable William B. Shubb had ordered the case stayed pending decision on petitioner's interlocutory appeal. ECF No. 67. The Ninth Circuit has now dismissed the interlocutory appeal. ECF Nos. 68, 70.

Under Federal Rule of Civil Procedure 60(b), a party may seek relief from judgment or order in limited circumstances such as mistake, newly discovered evidence, and fraud. Fed. R. Civ. P. 60(b)(1)-(3). "Motions for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure are addressed to the sound discretion of the district court." Allmerica Financial Life Insurance and Annuity Company v. Llewellyn, 139 F.3d 664, 665 (9th Cir.1997). "A motion

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1 under Rule 60(b) must be made within a reasonable time” and “no more than a year after the  
2 entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).<sup>1</sup>

3 In his amended motion, petitioner seeks this court to “vacate the final judgment in this  
4 case and to reopen the case and hear the petitioner Malanje Phea’s constitutional claims on the  
5 true merits.” ECF No. 73 at 1-2. Petitioner further asserts the undersigned’s February 17, 2021  
6 Findings and Recommendations recommending dismissal of petitioner’s habeas petition contains  
7 procedural errors in its application of state law. Id.

8 To the extent, petitioner is seeking relief pursuant to Rule 60(b), relief is not available  
9 here because no final judgment has been entered in this action. Fed. R. Civ. P. 60(b) advisory  
10 committee’s notes (“The addition of the qualifying word “final” emphasizes the character of the  
11 judgments, orders or proceedings from which Rule 60(b) affords relief.”). If petitioner is seeking  
12 reconsideration of the undersigned’s February 17, 2021 Findings and Recommendations, the  
13 proper filing is an Objection to the Findings and Recommendations as set forth in the February  
14 17, 2021 Findings and Recommendations. ECF No. 52.

15 In accordance with the above, IT IS HEREBY ORDERED that

- 16 1. The stay of this action is LIFTED; and  
17 2. Petitioner’s Request for an Evidentiary Hearing (ECF No. 72) is DENIED.

18 Further, IT IS HEREBY RECOMMENDED that petitioner’s Amended Motion for Relief  
19 from Judgment (ECF No. 73) be DENIED.

20 These Findings and Recommendations are submitted to the United States District Judge  
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
22 after being served with these findings and recommendations, any party may file written  
23 objections with the court and serve a copy on all parties. Such a document should be captioned  
24 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the

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28 <sup>1</sup> The one-year time period is limited to motions under Rule 60(b) (1)-(3).

1 objections shall be filed and served within fourteen days after service of the objections. The  
2 parties are advised that failure to file objections within the specified time may waive the right to  
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: October 21, 2021

5 /s/ Gregory G. Hollows  
6 UNITED STATES MAGISTRATE JUDGE  
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